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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,982	08/06/2003	David B. Johnson		6958

7590 10/21/2004  
David B. Johnson  
576 N. St. Asaph St.  
Alexandria, VA 22314

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/634,982	JOHNSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/6/03</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 10, 11, 12, 15, 16 and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Worthington (2,320,840).

Worthington discloses a condiment dispenser comprising a container (38) having a condiment therein (e.g. mustard, page 1, col. 1, lines 2) and a closure (41) removably engaged (by threads) with the container wherein the closure comprises a tool (e.g. a serving member 46) disposed thereon so that the tool extends into the container when the closure is engaged with said container. This is all claim 1 recites. In regard to claims 3, 5, 11 and 12, Worthington discloses the tool can be a spoon, paddle, fork or other serving device (page 2, col. 2, lines 31 plus).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 7, 8, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worthington (2,320,840) in view of Wu (4,717,032), Bloom (1,834,085), Eagle (5,251,774) and applicant's admission of the prior art.

Claims 2, 6, 7, 8, 13, and 14 differ from Worthington in the recitation of the particular "tool" recited. Applicants' tools are serving members as are Worthington's. To modify Worthington and substitute one conventional serving member for another conventional serving

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member for its art recognized and applicant's intended function is seen to have been obvious.

Wu, for example, discloses the equivalency of a knife or needle or spoon or fork or pipe or straw as serving member tools to be associated with a closure; Bloom discloses associating a spatula with a closure; Eagle discloses the equivalency of a fork, knife spoon or spear; and applicants admission of the prior art discloses "sporks" are conventional serving members.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worthington ('840) in view of Wu ('032), Bloom ('085), Lapworth (GB 2,142,322) and Kuenstler (2,005,091).

Claim 4 and 9 differ from Worthington in the particular conventional food contents in the container. Claims 4 and 9 recite salad dressing and ketchup respectively. Worthington specifically discloses mustard, relish, jelly, and horseradish and "other such substances" (page 1, col. 1 para 1). Worthington is therefore seen to be a general teaching that any substance that is capable of being removed from a container with a tool/serving member can be associated with a container comprising a lid and an associated tool. To modify Worthington and substitute one conventional food capable of being manipulated by a serving member for another conventional food having the same ability is therefore seen to have been an obvious matter of choice. Salad dressing and ketchup have the ability to be manipulated by a serving member. Wu, Bloom and Lapworth are relied on as further evidence of other conventional foods associated with containers including a closure/tool combination including seasonings(Wu), jams, jellies and preserves (Bloom) and pet food (Lapworth) . Kuenstler is relied on as further evidence that applicants are not even the first to provide a condiment dispenser containing ketchup with a

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closure/tool combination. Note, too, Kuenstler teaches the equivalency of mustard, horse radish and ketchup as foods to be accessed from a container by a tool associated with a closure.

Claims 1, 3, 5, 8, 10, 11, 12 and 14-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wu ('032) who discloses a condiment dispenser (e.g. for seasonings) in a container with a closure that is removably engaged with the container and has associated with the closure a tool that is a fork, knife or spoon that extends into the container which is all these claims recite.

Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kuenstler ('091) who discloses a condiment dispenser (for ketchup) in a container with a closure that is removably engaged with the container and has a tool extending into container and associated with the closure, which is all these claims recite.

The remainder of the reference cited on the USPTO 892 reference forms are cited as pertinent art. Note that the art is replete with examples of tools associated with container closures for dispensing or accessing the contents of the container.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
October 13, 2004

Steven Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
10/20/04